

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CONTEMPT PETITION NO.20 OF 2006

IN

CHAMBER SUMMONS NO.161 OF 2005

IN

SUIT NO.5603 OF 1999

...

Smt.S.V.Desai

through her C.A.

Shri Kirit Ambalal Desai ...Petitioner

v/s.

Ajit Maneklal Chokshi ...Respondent

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Mr.Shailesh Thakker i/b B.S.Shetty for the
Petitioner.

Mr.Murtaza Najmi for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 18TH JUNE, 2007

P.C.:

1. This contempt petition discloses really a gross case of contempt.

2. There is a money decree passed in favour of the Petitioner and against the Respondent. The decree holder took out proceedings for execution of the decree. Chamber Summons was taken out for the purpose of examining the judgment debtor under Order 21 Rule 41 of the C.P.C. to disclose details and particulars of the assets on affidavit. In those proceedings the present Respondent/judgment debtor filed an affidavit dated 7-9-2004 stating that he is not owning any assets. In that chamber summons an order was made on 1-2-2005. The court made an order granting liberty to the decree holder to take out chamber summons for arrest of the judgment debtor in accordance with the provisions of C.P.C. Accordingly, Chamber summons No.161 of 2005 was taken

out for arrest of the judgment debtor. While that chamber summons was before the court the judgment debtor offered to pay the amount to the decree holder. He promised to pay an amount of Rs.6,60,000/- as full and final settlement of decree. He agreed to pay Rs.3,60,000/- on or before 26th April, 2005 and balance amount was to be paid by him by installment. The decree holder accepted these terms. The parties entered into consent terms. They were produced before the court and the court on 15th March, 2005 passed an order taking consent terms on record and disposing of the chamber summons in terms of the consent terms. It transpires that the judgment debtor had moved the Insolvency Court in February, 2005 for being declared as an insolvent. The information that the judgment debtor has moved the Insolvency Court for being declared as an insolvent was suppressed from the court hearing the chamber summons as also from the decree holder. Ultimately the judgment debtor was declared as insolvent by order dated 31st March, 2005. As a result of that it was not possible to execute the decree passed against the judgment debtor.

3. This contempt petition was before the court on

22-9-2006. The Respondent appeared before the court and stated that he is paying Rs.4 lakh to the Petitioner by 26-9-2006. On 26-9-2006, the Respondent filed an affidavit before the court stating therein that he has arranged for Rs.4 lakh and he will pay that amount to the Petitioner tomorrow, if the Petitioner withdraws the matter filed against him in respect of dishonoured cheques. Copy of this affidavit has not been served on the Petitioner. No payment was also made. Ultimately, the court issued show cause notice in this petition by order dated 6th October, 2006. Despite the show cause notice the Respondent did not appear, therefore, bailable warrant was required to be issued by the court to secure the presence of the Respondent before the court.

4. The judgment debtor has filed affidavit in this petition. The main defence is that under the consent terms if the payment is not made by the dates mentioned in the consent terms, the decree is executable, and therefore, according to the Respondent he is not guilty of committing any contempt. Merely because the remedy of execution of a decree is available, the court is not denuded its

power to initiate proceeding for contempt, if the court finds that the conduct of the Respondent deserves an action under the Contempt of Courts Act. In the present case, the circumstances under which the consent terms came to be entered into have to be seen. The consent terms came to be entered into when the decree holder had taken out a chamber summons for arrest of the judgment debtor. By filing the consent terms the Respondent successfully prevented the court from considering the chamber summons on its own merits. He concealed from the court and the decree holder the information that he himself had moved the Insolvency Court for being declared as an insolvent. As the Respondent was declared as insolvent, the normal mode of execution of the decree became unavailable to the decree holder. In my opinion, the Respondent aggravated the contempt by his conduct during the pendency of this contempt petition. He made a solemn statement before the court that he will pay Rs.4 lakh before 26-9-2006. While making the statement he did not put any condition. The court relying on his statement adjourned the matter. But on 26-9-2006 he filed an affidavit stating that he is willing to pay Rs.4 lakh as full and final settlement and the decree holder should withdraw all criminal

and civil proceedings against him. It is no where explained as to from where if he was already adjudicated as insolvent he was going to bring the amount of Rs.4 lakh for payment to the Petitioner. Copy of the affidavit dated 26-9-2006 was not served on the Petitioner.

5. It is thus clear from the conduct of the Petitioner, during the pendency of the petition, that he was bent on interfering with the course of justice and preventing the court from making the orders. It is clear that the Respondent has willfully committed breach of orders passed by the court. He has deliberately done it and his conduct shows that he interfered with the course of justice. Therefore, in my opinion, sentence is required to be imposed on the Respondent, though it was claimed that the Respondent is 72 years of age and therefore the jail sentence should not be imposed on him. I have already narrated above that the conduct of the Respondent is gross and if jail sentence is not imposed on the Respondent only because of his age, in my opinion, that will defeat the purpose for which the contempt jurisdiction is created by law. I accordingly hold that the Respondent is guilty of having committed

contempt of this court. He is sentenced to undergo simple imprisonment for a period of two months and also to pay of Rs.2000/-. The Respondent is also directed to pay costs of this petition to the Petitioner which are quantified at Rs.10,000/-.

6. At the request of the learned Counsel appearing for the Respondent, that part of the order by which the Respondent is sentenced to undergo simple imprisonment is stayed for a period of six weeks, subject to the condition that within two weeks from today the Respondent pays the amount of fine and costs.

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